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COMMITTEE ON RELATIONS WITH THE HOST COUNTRY

SUMMARY RECORD OF THE 73rd MEETING

Held at Headquarters, New York,
on Thursday, 21 September 1978, at 3 p.m.

Chairman: Mr. ROSSIDES (Cyprus)

later: Mrs. CASTRO de BARISH (Costa Rica)

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The meeting was called to order at 3.45 p.m.

ADOPTION OF THE AGENDA

1. The agenda was adopted.

MATTERS REMAINING BEFORE THE COMMITTEE (A/33/231)

2. The CHAIRMAN drew attention to a letter dated 31 August 1978 addressed to the Chairman of the Committee by the Acting Permanent Representative of the Union of Soviet Socialist Republics to the United Nations on the subject of new United States legislation regarding the privileges and immunities of diplomats. The letter was to be found in the annex to document A/33/231.

3. Mr. ROSENSTOCK (United States of America) said that the over-all analysis of the host country was that, on the whole, 1978 had been a good, although not entirely trouble-free, year.

4. As members would see from the draft report (Conference Room Paper 5 and Corr.1), there had been a number of incidents involving the security of missions and of their staff. He regretted that there was sometimes a delay in replying to notes from missions, usually because of the need to be in full possession of the facts before making such a reply. Every effort would be made to improve the situation in the future, but the co-operation of the complainants was also needed: they were not always as willing as they might be to help investigate the facts. A reply had been sent to the Soviet Mission regarding the most recent incident involving the swimming pool at the Soviet compound at Riverdale, but copies had not yet been made available to members of the Committee. The investigation into the act of vandalism was continuing, but the police had come to the conclusion that children might have been responsible. The substances involved had not been harmful. People in the vicinity had been asked immediately to report any suspicious incidents to the police. A 24-hour watch was already being maintained, but mobile units had also been asked to give special attention to the area surrounding the compound.

5. As far as demonstrations by the Jewish Defense League outside the Soviet Mission were concerned, the police had managed to contain the demonstrators behind barricades, and there had not been any untoward incidents. Every attempt was made to maintain close relations between the Mission and the police, and to provide adequate protection for Soviet personnel and property. The host country did, of course, regret the occurrence of such incidents and hoped that in the future they would be kept to a minimum. The complaints about incidents at trade centres, airline premises and tourist offices did not fall within the purview of the Committee. Considering the violent incidents that had occurred in other parts of the world, it was fair to say that the overwhelming majority of missions had had no problems and had enjoyed excellent conditions for carrying out their functions in New York City. However, the Committee was right to concern itself with any incidents that occurred.

6. The problem of the indebtedness of missions and mission staff persisted,

(Mr. Rosenstock, United States)

although the majority did abide by their legal and contractual obligations in a praiseworthy manner, and were an asset to the New York community. There were, however, four cases involving missions and mission staff in which sums of $15,000, $37,000, $40,000 and $80,000 were owed for items such as rent, mortgage payments, telephone and hotel bills, and payments to importers and credit card companies. In all those cases there was long-standing indebtedness which could cause serious problems.

7. There continued to be an excessive number of parking violations involving diplomatic motor vehicles which endangered the public because fire hydrants and bus stops were obstructed, and access for emergency vehicles was blocked as a result of double parking.

8. On the subject of the proposed new legislation to which reference was made in the letter from the Acting Permanent Representative of the Union of Soviet Socialist Republics to the United Nations, contained in document A/33/231, he said that, although he welcomed the Soviet interest in the governmental processes of the United States, from which the Soviet Union could well learn a lesson, it was regrettable that the document had been circulated without prior discussion, since the account it gave of the legislation was inaccurate. He would not speculate on the reasons why the letter had been issued as a document of the General Assembly, rather than of the Committee. United States law on diplomatic immunities and privileges had been inherited from the pre-independence period and did not conform to the 1961 Vienna Convention on Diplomatic Relations. The purpose of the new legislation which had recently been approved by both the House of Representatives and the Senate, and would shortly be signed by the President, was to bring the law into line with that Convention. There was nothing in that legislation to oblige a diplomat to appear in court to establish immunity. In other words, there would be no change in existing practice. In cases where diplomats wished to assert their immunity, the State Department would continue to enter suggestions of immunity without any action by the diplomat concerned, other than his informing the Department of his desire to answer a claim.

9. The part of the legislation which established the liability of insurance firms with regard to traffic accident claims brought against staff of diplomatic missions was not new, except that it placed an obligation on insurance companies to meet such claims. The diplomatic community should heartily welcome such a measure since it meant that it would enjoy greater protection. Under the law of New York State, vehicle insurance had long been obligatory and, as far as he knew, there had never been any question of diplomats being excluded from that requirement.

10. The United States continued to be proud to serve as the host to the United Nations, and remained open to any suggestions for facilitating the work of the diplomatic missions accredited to the Organization.

11. The CHAIRMAN said that a summary of the letter contained in document A/33/231 was being circulated to members of the Committee. The Soviet delegation wished it

(The Chairman)

to be included in the appropriate part of the Committee's report. If he heard no objection, he would take it that the Committee acceded to that request.

12. It was so decided.

13. Mrs. CASTRO de BARISH (Costa Rica), Rapporteur, said that the statement made by the representative of the United States and those of any subsequent speakers would also be reflected in the Committee's report.

14. Mr. BYKOV (Union of Soviet Socialist Republics) welcomed the assurances given by the representative of the host country that all appropriate measures would be taken to ensure the security of missions and the safety of their staff. At the same time, he was concerned at the host country's over-optimistic assessment of the scope of the problem. As members could see from the draft report contained in Conference Room Paper 5, a considerable number of notes had been circulated on the subject of very serious problems, including acts of terrorism, bombing incidents, threats to mission staff, violations of mission premises, and other illegal acts. Many missions had complained of the failure of the host country to take proper measures, and some of the replies received to the notes on specific cases had not been convincing. The Soviet Mission had not yet received the reply regarding the swimming pool incident at the Riverdale compound. In his estimation, it was not the number of incidents that should concern the Committee. An incident involving only one mission or one member of the diplomatic community was sufficient to give cause for serious concern. The need to ensure the normal operation of missions and their staff should remain the focal point of the Committee's attention.

15. With regard to the other problems that had been mentioned by the representative of the host country, his delegation wished to point out that, despite appeals from the Committee and the General Assembly, vehicles were still being arbitrarily towed away. The indebtedness of missions and mission staff was a matter that had been discussed in general terms in the past, and he reiterated his delegation's view that the Committee should meet regularly for detailed discussion of the broad range of issues, including indebtedness, which fell within its mandate. Such meetings would benefit the entire diplomatic corps and the host country.

16. Thanks were due to the representative of the United States for his attempt to explain the new legislation and dispel any doubts. However, his delegation was still concerned that diplomatic privileges and immunities could be seriously affected. It would have facilitated the Committee's work if the full text of the new bill had been made available. If, as had been said, the bill was intended merely to bring existing legislation into line with the 1961 Vienna Convention, that would be a welcome development and, of course, the adoption of such legislation was an internal matter. However, some points remained unclear. He was aware of cases in which individuals had been summoned to appear in court, and if the new bill allowed that practice to continue, the new legislation would in fact be contrary to the obligations assumed by a State under the Vienna Convention. In no circumstances could a diplomat be required, directly or indirectly, to establish his right to immunity in court.

(Mr. Bykov, USSR)

17. With regard to the payment of insurance claims, he was afraid that, as a result of the new legislation, insurance companies would refuse to insure diplomatic staff, or would charge them higher premiums. That could place a particularly heavy burden on the missions of small countries and affect their normal operations.

18. The purpose of the Soviet note contained in document A/33/231 was to obtain real assurances from the host country that there would be no change in existing practice and to solicit advice from the Legal Counsel.

19. Mr. O'LANYER (France) said that, while he welcomed the explanations given by the representative of the host country, his delegation would like to have more time to study the new legislation in detail. He was sure, however, that the bill would be fully in line with the international obligations of the United States under the conventions to which it was a party.

20. His delegation requested a progress report from the host country on the negotiations taking place between New York State and the federal authorities with regard to the inviolability of missions and security of their staff and the obligation of the police to evacuate demonstrators without the need for a prior official complaint. That matter had been raised at the 66th meeting of the Committee and during discussion of the Committee's report to the thirty-second session of the General Assembly.

21. Mr. ROSENSTOCK (United States of America) said that his delegation would be pleased to make copies of the text of the new legislation available. He assured the representative of the Soviet Union that the United States reply concerning the vandalism at the Riverdale compound had been sent, albeit only recently. Pending that formal reply the host country had kept in constant contact with the Soviet Mission. He further reassured the representative of the Soviet Union that diplomatic immunities and privileges would not be affected in any way by the new bill. Under the law of the United States, which considered a person to be innocent unless evidence could be brought to prove the contrary, it was sometimes necessary for a diplomat to appear in court in order to secure a conviction, for instance, if he was the only witness to the alleged crime. However, it was for that diplomat and his Government to decide whether or not he should give evidence in court; no pressure could be brought to bear on him by the United States authorities. When a diplomat did decide to appear in court, the United States authorities would continue to do everything possible to ensure that the minimum inconvenience was caused.

22. Mr. LAVALLE (Secretary of the Committee) announced that the United States reply to the Soviet Mission concerning the recent incident at Riverdale would be circulated shortly as a Committee document (A/AC.154/174).

23. Mr. THIEMELE (Ivory Coast) said that he agreed with the Soviet view that the Committee should meet regularly, since there were so many important problems to discuss. He wished to draw the Committee's attention to a series of problems. His delegation was experiencing difficulties with regard to housing for its diplomats. When his Mission wished to enter into a lease agreement it was required to supply the

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name of the diplomat who was to occupy the premises, even although it was quite clear that it was the Mission that was entering into the lease agreement and paying the rent. Since the accommodation was occupied in the name of that diplomat, when he left the Mission had no priority whatsoever for renewal of the lease and thus had no claim further to occupy that accommodation. He was acquainted with the views of other missions, particularly those of African countries, on that matter, and since such situations constituted a common problem the question should be brought to the attention of the United States authorities.

24. The second question he wished to discuss was the question of parking problems, and particularly the towing of vehicles and the consequent fees that had to be paid. It was the first time he had been confronted with a situation where it was necessary to pay private companies for towing. He was not clear who authorized those private companies to tow away vehicles with diplomatic licence plates. He wished to suggest that the City should be requested to arrange for the police to tow such vehicles so that it would not be necessary to pay fees and so as to avoid direct contact between diplomats and private companies. Another problem with regard to parking concerned reserved diplomatic parking spaces. The reserved space in front of his residence was regularly occupied by vehicles with United States licence plates, and he was therefore obliged to park illegally. Although he received traffic tickets as a result of such parking violations, the unauthorized vehicles occupying his reserved place never received such tickets. That situation also arose in the case of his Permanent Mission, and the matter should therefore be examined by the United States Mission.

25. The third question he wished to discuss concerned tax exemption cards. Shops often refused to honour such cards. If there was no obligation to honour the cards, that meant that the provisions of the Vienna Convention were not being fully respected. If the tax exemption was not being applied, missions would have to inform their Governments of the fact.

26. The fourth matter he wished to raise concerned entry formalities at the various New York airports. There were two aspects to that problem. Firstly, diplomats wishing to collect their luggage met with hostile attitudes. The airport services, and the customs authorities in particular, should be informed of the rights of diplomats and the treatment to which they were entitled. Furthermore, the forms that had to be filled out upon entry into the host country, which were usually available only in English, represented a serious obstacle because many diplomats were unfamiliar with that language. Diplomatic staff members of missions were not allowed access to disembarking passengers, and it therefore sometimes took those passengers as long as an hour to fill out their entry forms. He wished to ask the representative of the host country to examine the question of facilitating the entry of distinguished visiting diplomats and that of diplomatic mission staff themselves.

27. Lastly, if the United States bill on immunities and privileges had become law, he wished to suggest that the text of that law should be transmitted to all missions and that the Committee should request the Legal Counsel to consider it in

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the light of the Headquarters Agreement and the relevant international conventions and submit a report to the Committee.

28. Mr. AL-WITRI (Iraq) said that he understood from the statement made by the representative of the United States that the new law was only intended to bring United States legislation into conformity with the standards and provisions of the Vienna Convention. According to the Vienna Convention, diplomats were not required to be brought before the courts by the executive authorities of the host country. He understood from the Soviet note (A/33/231) that the new law required diplomats to appear in court to establish their immunity, a requirement which was incompatible with the provisions of the Vienna Convention. He therefore supported the requests made by the representative of the Ivory Coast that copies of the law should be made available to the Committee for study in the light of the provisions of the Vienna Convention.

29. He also wished to call the Committee's attention to the deplorable incident mentioned in the second paragraph on page 19 of the draft report of the Committee (Conference Room Paper 5). His delegation feared that further, more violent, incidents might occur in New York and wished to ask the Committee to endeavour to make the necessary arrangements to protect his Mission.

30. Mr. ROSENSTOCK (United States of America), referring to the remarks made by the representative of the Ivory Coast, said that his delegation was not unaware of the unfortunate circumstances mentioned with regard to the lease in question. Both his Mission and the City Commission had attempted to convince the landlord to behave in a more courteous and forthcoming manner. However, in a city the size of New York and with such a large diplomatic community, it was inevitable that there would be unfortunate occurrences with unco-operative landlords and landlords who, on occasion, might have had unpleasant experiences with some other diplomatic mission. Where there were problems, his Mission did its best to solve them; if it was unable to solve them, it could do nothing more than apologize for the inconvenience caused. However, he believed that the situation in New York compared favourably with that in most other cities of the world.

31. With regard to the question of towing, most or all of the private towing occurred where vehicles were improperly parked on private property. In such cases, the building management might employ private companies to tow cars. If, by inadvertence, a vehicle with a diplomatic licence plate was towed away, an expense was incurred for removing it and compensation must be paid to cover that expense. In cases where a diplomatic parking space was occupied improperly by a vehicle without a diplomatic licence plate, the City of New York tried to exercise the greatest possible vigilance and remove unauthorized vehicles from such spaces promptly. If there was a diplomatic parking space which presented unusual difficulties in that regard, his Mission would ensure that that vigilance would be redoubled in order to keep that space clear at all times.

32. With regard to the question of tax exemption, shops were supposed to honour

(Mr. Rosenstock, United States)

tax exemption cards. The major shops and stores were fully aware that they were under an obligation to honour those cards. If there was any instance in which those cards had not been honoured, his delegation would appreciate it if those cases were reported to the United States Mission or the City Commission.

33. With regard to the question of entry formalities at airports, his Mission provided passes for diplomatic mission staff wishing to meet passengers upon arrival. If there had been any instances of discourtesy, the United States Mission most profoundly regretted it. Special treatment was not always easily obtained in an egalitarian society such as that of the United States. However, violation of legal privileges and rights was intolerable and his Mission would be prepared to take steps to ensure that there was no recurrence of any such violation. He was not personally aware of the forms in question, and, in his experience, forms were usually supplied in both French and English. However, he believed that there was usually personnel at airports who spoke a large number of languages, and assistance should therefore be available.

34. With regard to the new United States law, his delegation had now informally made available copies of that recently adopted legislation. The law would be signed by the Executive in the very near future, and his delegation hoped to circulate copies to all members of United Nations missions very soon. The slight changes made by that law would not affect the status and activities of diplomatic missions in New York. Such changes as there were would relate to bilateral postings. The new law did not require a diplomat to appear before a court to plead his immunity. Moreover, a requirement to appear to plead immunity did not constitute a requirement to accept the jurisdiction of a legal system. Under the new law, the system whereby the State Department undertook, through the Justice Department, to present the suggestion of immunity would continue in existence.

35. With regard to the remarks made by the representative of Iraq concerning the stolen car, the person responsible had been apprehended rapidly, and the unscathed vehicle had been returned without delay. The United States Mission could only regret that such incidents occurred and hoped that the speed with which the problem had been solved to some extent mitigated the inconvenience caused. His delegation shared the concern expressed by the representative of Iraq with regard to security. In the light of incidents occurring elsewhere in the world, it could understand why security had been a matter of major concern to the Permanent Mission of Iraq. The United States Mission was relieved that such tragic incidents had not occurred in New York, and the New York City and Federal authorities would continue to afford the best possible protection to the Permanent Mission of Iraq.

36. Mr. KOSTOV (Bulgaria) said that the Soviet note raised a question of great interest to the diplomatic community of New York. However, it was difficult to discuss the domestic law in question after it had been adopted.

37. He shared the concern expressed by the representative of the Ivory Coast regarding the Committee's work. The Committee should meet regularly to consider problems within its competence. Those problems were numerous, and the Committee was obliged to discuss them all at the same meeting.

38. Mrs. Castro de Barish (Costa Rica) took the Chair.

39. Mr. BYKOV (Union of Soviet Socialist Republics) said that the discussion at the meeting had shown that the Committee must meet regularly to deal with the many problems that were arising.

40. A letter had been sent by the Soviet Mission to the Chairman of the Committee calling attention to the problems that might arise as a result of the new United States legislation. The Soviet delegation requested an explanation from the representative of the United States with regard to the legislation in question and also the opinion of the Office of Legal Affairs of the United Nations Secretariat on that matter, since the new law affected the Agreement between the United States and the United Nations and dealt with the normal operating conditions of missions.

41. He read out the second, third and fourth paragraphs of his Mission's letter of 31 August 1978 (A/33/231) and expressed surprise at the statement made by the representative of the United States to the effect that that legislation contained nothing new.

42. In accordance with international agreements in that field, in particular the 1961 Vienna Convention on Diplomatic Relations, which made indirect reference to the status of the staff of diplomatic missions, the Agreement between the United Nations and the United States established the immunity of diplomatic representatives both in civil and criminal matters. That meant that under international law the States concerned undertook international obligations to respect, ensure and guarantee the immunity of diplomatic missions and their staff. If any question arose in court concerning the staff of diplomatic missions, under international law and that Agreement the host country should protect the immunity of those diplomats in court, and those diplomatic representatives should not have to go to court to establish their status. The concern expressed in the Soviet letter was valid since, under international law, if any matter arose in court the Justice Department of the host country took the necessary measures to guarantee that immunity.

43. In the version of that law which had just been circulated to the members of the Committee, the fifth section could be interpreted as stating that the legal immunity of mission staff might be seriously restricted. If that version was adopted, such a situation would be inadmissible and would contradict international norms and the Vienna Convention. He therefore appealed to the representative of the United States for a clear statement and assurance that the new United States legislation would not affect the immunity of diplomatic mission staff in the manner mentioned in the Soviet letter.

44. The law needed to be studied, and the Committee should continue its consideration of the matter until it was absolutely certain that there would be no encroachment on the privileges of diplomatic staff and that international law on that question would be respected.

45. Mr. KIRSCH (Canada) said that the occurrence of a number of regrettable acts in New York City involving diplomats and diplomatic missions should

(Mr. Kirsch, Canada)

not blind the Committee to the fact that 1978 had mostly been a good year as far as the seriousness and frequency of such incidents was concerned. Furthermore, the number of notes addressed to the Committee, although each note referred to some incident, could not be taken as an indication of the way in which the host country took its responsibilities with regard to the protection of diplomats and diplomatic missions. The diplomatic community in New York was very large, and in a city the size of New York it was inevitable that a certain number of regrettable acts should occur. His Government was convinced that the Government of the host country was aware of the problems and was attempting to solve them. Diplomatic missions should also be aware that they had responsibilities and that their privileges should not be abused. With regard to the new law referred to in the Soviet note verbale of 31 August 1978 (A/33/231), he saw no clear evidence of any violation by the host country of its obligations under international conventions or agreements. Finally his delegation had some reservations with regard to the holding of regular meetings of the Committee since, in its view, meetings should be motivated by the existence of specific problems. Members could call for a meeting at any time and should do so if a specific problem arose, since it would be in the interests of the efficiency of the Committee's work to prevent problems from accumulating.

46. Mr. DJIGO (Senegal) expressed agreement with the statement made by the representative of the Ivory Coast. With regard to the remarks made by the representative of Canada, he said that the purpose of the Committee's meetings was not merely to chastise the host country but to find ways of improving co-operation with the host country so that diplomats and diplomatic missions could function with complete security and enjoy the rights and privileges to which they were entitled under international law. His delegation had taken note of the explanations provided by the representative of the host country with regard to the new law affecting the immunities and privileges of diplomatic missions but continued to feel concerned over the effects the law would have in practice on the enjoyment of diplomatic rights and privileges. He noted that officials at United States airports verified the documents submitted by entering and departing diplomats and he wondered whether the fact that a diplomat had on one occasion or another claimed diplomatic immunity in the United States might jeopardize his possibilities of returning to that country. Furthermore, he asked what procedures had been provided to avoid difficulties and facilitate the entry and meeting of officials visiting the United States from foreign States, in particular diplomats accredited to international and intergovernmental organizations.

47. Mr. ROSENSTOCK (United States of America) repeated for the benefit of the representative of the Soviet Union that the new law, as adopted, did not require the appearance of diplomats or their attorneys in court to assert immunity. With regard to the questions raised by the representative of Senegal, he said that the verification of diplomatic documents at airports was intended for the protection of all, since many terrorists had been known to make use of false diplomatic passports and documents. The United States kept no record of cases in which a diplomat asserted immunity, and he assured the representative of Senegal that such assertion could in no way ever be held against a diplomat in the United States. He pointed out, however, that it was generally understood in international law that in certain circumstances the waiver of immunity was appropriate.

48. Mr. BYKOV (Union of Soviet Socialist Republics) said that his delegation was still not convinced that the new United States law did not conflict with the obligations of the host country under the various relevant international agreements and conventions. It maintained its request that a legal opinion should be sought from the Secretary-General with regard to that legislation. The important point was that diplomats could not be required, either in person or through their representatives, to prove their immunity which, under international law, was guaranteed by the host country. Section 5, in particular, of the new law gave rise to doubts on that point. He could not agree with the representative of Canada that the situation in 1978 had been good, since the occurrence of even a single incident affecting the ability of diplomats and diplomatic missions to live and work in normal conditions showed that the host country had not taken all necessary measures to ensure full compliance with its obligations under international law.

49. The CHAIRMAN, speaking as representative of Costa Rica, said that paragraph 8 of General Assembly resolution 2819 (XXVI) governed the convening of meetings of the Committee, and any change in those rules would require consideration by the Sixth Committee and the General Assembly. She agreed that if meetings were held whenever issues arose the Committee would not be faced with a backlog at the end of the year.

50. Speaking as Chairman, she suggested that the Committee should suspend its discussion of the item on the understanding that it would be resumed later on, and take up the next item on the agenda. She took it that, if she heard no objection, the Committee agreed to that suggestion.

51. It was so decided.

ADOPTION OF THE COMMITTEE'S REPORT TO THE GENERAL ASSEMBLY /Conference Room Paper 5 and Corr.1 (French and Russian only)/

52. The CHAIRMAN, speaking as Rapporteur, introduced the portion of the draft report prepared thus far (Conference Room Paper 5 and Corr.1). She said that the format and method of preparation of the report followed the traditional pattern. Sections I and II were the same as in previous years. She pointed out an error in paragraph 4 of the text: Mr. Aké should not be listed as an officer of the Committee.

53. Section III contained a summary of the Committee's discussion of an unprecedented matter, namely the request by the host country to a Member State to withdraw its permanent representative; the matter had led to an analysis of various legal issues. Section IV dealt with security, a matter of great concern to all Member States, and contained a summary of complaints submitted by Member States and replies by the host country. None of the complaints had led to the convening of meetings of the Committee. The present contents of section V, which dealt with the parking situation, would probably be transferred to section IV, so that section V would be available for a summary of the current meeting dealing with the Soviet note verbale of 31 August 1978 (A/33/231) concerning the new law pending in the host country. Other subjects would be summarized and inserted in the appropriate sections, in annexes or in the continuation of the draft report. She pointed out that some of the paragraphs were in the wrong order and that they would all have to be numbered.

The meeting rose at 6.15 p.m.